

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

RONALD B. LOVINS)	
)	
COMPLAINANT)	
)	CASE NO.
VS.)	99-148
)	
FLEMING-MASON ENERGY)	
COOPERATIVE)	
)	
DEFENDANT)	

O R D E R

Ronald B. Lovins filed a formal complaint against Fleming-Mason Energy Cooperative Corporation (Fleming-Mason) alleging that he is entitled to a refund of \$1120 paid to Fleming-Mason as a deposit to secure electric service at a business account in Mt. Olivet, Kentucky. Mr. Lovins claims that Fleming-Mason erred by refunding the deposit to the purchaser of his business, and he requests that the deposit be refunded to him. Upon receipt of the complaint, the Commission ordered Fleming-Mason to satisfy the matters complained of or file a written answer. Fleming-Mason filed an answer in which it denied making any error in refunding the deposit. Further, Fleming-Mason asserted that any dispute that Mr. Lovins now has regarding the refund check is a private matter between Mr. Lovins and the successor to his business, not Fleming-Mason.

The complaint filed by Mr. Lovins includes an extensive recitation of the facts supporting his claim. Mr. Lovins mailing address is R.R. 2, Box 254, Mt. Olivet,

Kentucky. In February 1995 Mr. Lovins requested Fleming-Mason to provide three phase electric service to a building in which he intended to operate a sawmill. The service was installed on February 3, 1995 and Mr. Lovins subsequently paid Fleming-Mason \$1140, consisting of a \$10 membership fee and a \$1130 security deposit. The payment was made by check dated February 23, 1995, drawn on the account of Cedar City, Inc., R.R. 2, Box 254, Mt. Olivet, Kentucky. The check was signed by Ronald Lovins. Fleming-Mason then issued a certificate of deposit to Mr. Lovins in the amount of \$1130.

Fleming-Mason billed the account in the name of Cedar City, Inc., care of Ron Lovins, until late 1996. On October 15, 1996, Cedar City, Inc. executed a Bill of Sale whereby it sold and transferred numerous pieces of logging equipment and all personal assets to Virgil Hall. Neither Cedar City, Inc. nor Ron Lovins informed Fleming-Mason that the sawmill operation had been sold. No request was made for either a final bill or a return of the \$1130 deposit.

On or about November 5, 1996, Fleming-Mason received a check for payment of electric service rendered the prior month on this account. The check, dated November 1, 1996, was signed by Barbara Lovins and drawn on the account of Cedar Valley Timber, Inc., R.R. 2, Box 254, Mt. Olivet, Kentucky. Included with this payment was a note which said, Notice: Our name is now Cedar Valley Timber, Inc. Please bill in this new name. Barb Fleming-Mason then revised its records to reflect this name change, and all subsequent bills for this account were rendered to the same address but in the name of Cedar Valley Timber, Inc., care of Ron Lovins.

On March 8, 1999, Mr. Lovins called Fleming-Mason and requested that the three phase service for this account be disconnected. Shortly thereafter, Mr. Lovins again called Fleming-Mason to inquire about the refund of the security deposit and he was informed that a check had already been sent. After waiting a few days and not receiving the check, Mr. Lovins again called Fleming-Mason to verify that the check had been sent to his correct mailing address. Fleming-Mason confirmed that a deposit refund check, payable to Cedar Valley Timber, Inc., had been mailed to R.R. 2, Box 254, Mt. Olivet, Kentucky. Mr. Lovins then contacted the Post Office and was informed that Virgil Hall's daughter had filed a change of address card for Mr. Lovins Post Office Box. Mr. Lovins subsequently contacted Mr. Hall, who acknowledged having received and cashed the deposit check.

Based on the evidence of record and being otherwise sufficiently advised, the Commission finds that pursuant to KRS 278.260(2), a hearing in this case is not necessary in the public interest or for the protection of substantial rights. Accepting as true the facts set forth in Mr. Lovins' complaint, this dispute involves a business account opened to operate a sawmill in the name of Cedar City, Inc. The deposit for the account was paid by a check issued by Cedar City, Inc., P. O. Box 254, Mt. Olivet, Kentucky. All bills for electric service were rendered in the name of Cedar City, Inc. at this address until November 1996, when the account name was changed to Cedar Valley Timber, Inc. but the address did not change.

Mr. Lovins requested Fleming-Mason to terminate electric service in March 1999 and to mail the deposit refund check to P. O. Box 254, Mt. Olivet, Kentucky, which he indicated was his personal mailing address. Fleming-Mason then mailed a refund

check in the name of Cedar Valley Timber, Inc., the name listed on the account for almost two and one-half years, and mailed the check to Mr. Lovins personal P. O. Box.

Fleming-Mason's tariff governing refund of the deposits, set forth in its Rules and Regulations, IV., III., states that, In the event the customer ceases to be a member of the Cooperative and no longer requires service, the deposit will be refunded upon payment of all charges due the system under the applicable rate schedule or electric service agreement. In this case, the facts clearly demonstrate that the customer was originally Cedar City, Inc., and then Cedar Valley Timber, Inc. The funds used to pay the deposit came from the business account of Cedar City, Inc. At no time after selling its assets did Cedar City, Inc. request a refund of its deposit or inform Fleming-Mason that there was a new owner. Rather, Fleming-Mason was only notified of a change in name.

Under these facts and circumstances, it was not erroneous for Fleming-Mason to issue a deposit refund check in the name of Cedar Valley Timber, Inc. and mail it to Mr. Lovins personal P. O. Box. Although a certificate of deposit had been originally issued to Mr. Lovins, the refund was properly issued in the current name of the customer who actually paid the deposit.

Fleming-Mason is certainly not responsible for the action of others who may have caused Mr. Lovins mail to be diverted or who may have converted the deposit refund check for their own use. These are issues of a private nature between Mr. Lovins and third parties, not Fleming-Mason. This Commission has no jurisdiction to determine whether the refund check was personal property which passed to Mr. Hall upon the sale

of Cedar City, Inc. s assets or whether Mr. Lovins has a right to the refund which is superior to that of Mr. Hall.

IT IS HEREBY ORDERED that the complaint of Ronald B. Lovins is dismissed.

Done at Frankfort, Kentucky, this 22nd day of September, 1999.

By the Commission

ATTEST:

Executive Director